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P 30E

File No. O. Elec.
(Suppl) / 52

Legal DEPARTMENT
A BRANCH

Subject:— Opinions under
the Electricity— (Suppl)
Act, 1948

File No. O. Electricity— (Suppl) / 52
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205-A.

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Para. XVII(3) -- Sixth Sch.--

(i) Whether expenses on account of the Director's fees Head Office office printing and stationery can be considered to be expenses on management for the purpose of --

(ii) Whether for the purpose of para -- the actual amount of income tax paid can be taken into consideration while arriving at a clear profit.

(iii) Whether the method adopted by the Puna Electric Supply Co. Ltd. under which the Revenue account of the Co. had borne heavy audit is legally permissible.

(iv) Whether in the case of a proprietary concern the licensee can charge any amount on account of his remuneration.

(v) Whether the income derived from the sale of a store and from wiring work undertaken can be regarded as profit pertaining to the business of the electricity supply.

(vi) Whether the loss on sale of investment can be treated as part of the operating expenses --

(vii) Whether service connection fees can be treated as revenue or other receipts arising from and ancillary to the business of electricity.

(viii) Whether the amount debited by the Co. towards Employees' Retiring Gratuities Reserve is covered by para ...

Local Department.

23748 2 1176
19-11-51 18-1-52

Submitted.

The Ranier Electric Supply Co. has applied to Government for permission to increase the present minimum charge of Rs.2/- per meter per month to Rs. 2/8/- per month. The Electricity Co. had entered into an agreement with the Ranier Municipality under which it has been provided that the Company shall be entitled to charge a maximum rate of 6 annas per unit for the supply of electricity to the public and that if a consumer consumes less than 7 units he will still have to pay the minimum charge of Rs.2/8/- per month. The validity of this agreement has however been challenged by the Electricity Company who seems to have filed a suit in that behalf. The F.W.D. has therefore raised a doubt whether the request now made by the Company can be granted. Secy. P.W.D. however thinks that the proposed revision is feasible.

2. Though the validity of the agreement of 1925 between the Ranier Electricity Co. and the Ranier Municipality has been challenged in a court of law, it would not seem necessary, as stated by Secy.P.W.D., to wait for the decision of the suit. Under para 2 in the Second Annexure to the Ranier Electric Licence, 1924, as amended by G.E.,P.W.D. No.5514/27, dated 9.8.1932, the Co. is entitled to charge a minimum rate of Rs.2-4-0 per month to consumers not using more than six units. Even though the agreement of 1925 is declared to be invalid, the Company would still be entitled to raise the minimum charge. In its letter dated 10.7.1951 (at p.1 of C.Section) the Company has however asked for permission to raise the minimum to Rs.2-8-0; but this appears to be a mistake and the Company does not seem to have taken into consideration

para 2 of the Second Annexure as amended in 1932.

It does not seem that there would be any objection to considering the Company's present proposal provided that the minimum cannot be more than ~~Rs.2-1-0.~~ Rs.2-1-0.

Id.

4/12/51

D.S. (Opinion)

Pl. Call for a copy of the plaint

in the suit filed by the Company.

Id. R.T.K.

5/12

Office.

Resubmitted.

A copy of the plaint since forwarded by the P.M.D. will be found at pp.37-41 of the Correspondence Section post. The P.M.D. has however not forwarded this time a copy of the agreement of 1925 (tho' a copy in Gujarati is at p.9 of C Section) and of the licence.

Id.

22/12 22/1

D.S.(Opinion)

I agree. Reply may be in terms

of para.2 of Shri D's note dated 4-12-51.

Id. R.T.K.

22/1

R.L.A.

Id. P.H.L.

22/1.

Office of the R.L.A.

Though the validity of the agreement of 1925 between the Rander Electricity Co. and the Rander Municipality has been challenged in a court of law, it would not seem necessary, as stated by Secretary, P.U.D., to wait for the decision of the suit. Under para.2 in the Second Annexure to the Rander Electric Licence, 1931, as amended by G.O., P.U.D. No.8514/27 dated 9-3-1932, the company is entitled to charge a minimum rate of Rs.2-4-0 per month to consumers not using more than six units. Even though the agreement of 1925 is declared to be invalid, the company would still be entitled to raise the minimum charge. In its letter dated 13-7-1931 (at p.1 of Correspondence Section) the company has however asked for permission to raise the minimum to Rs.2-0-0; but this appears to be a mistake and the company does not seem to have taken into consideration para.2 of the Second Annexure as amended in 1932. It does not seem that there would be any objection to considering the company's present proposal provided that the minimum cannot be more than Rs.2-4-0.

Sd. P.H.Lod,

Member of Legal Affairs.

U.R.to P.U.D., No.1143, dated the 24th January 1932.

Local Government.
D.I.No.3103/ SI-1-1932.

Submitted.

The short question that is raised for R.L.A's consideration in these papers is whether it is permissible to Government to allow the Tatas to make special appropriations to the General Reserve Fund under clause XVII(2)(c)(vi) of the Sixth Schedule to the Electricity(Supply) Act, 1948. The Chief Engineer, Electric Grid considers that although there is no specific statutory provision in the Electricity (Supply) Act, 1948 for providing for a General Reserve there is nothing contrary in the Act to debar Government from allowing such a reserve under the aforesaid provisions (vide p.37 ante). The Examiner Outside Audit is, however, doubtful (p.40 ante) and in the circumstances the matter is referred to R.L.A.

2. The expression "other special appropriations permitted by the State Government" in clause XVII(2)(c)(vi) appears to be wide enough to enable Government to allow a licensee to make appropriations to a General Reserve Fund. However, if large appropriations are allowed by Government to such a fund, it would deprive the consumers of their legitimate benefit which the Act aims at giving them. It is, therefore rather a matter of policy rather than of law, whether such appropriations which are not in consonance with the Scheme of the Sixth Schedule should be allowed.

Id.
10/3.

D.I.(Civil)

P.S.S.

P.O.(Civil).

Clause XVII, sub-clause (2)(a) of the Fifth Schedule to the Electricity Supply Act, 1943 provides for special appropriations sufficient to cover —

- (i) previous losses (that is to say excess of expenditure over income) which have arisen from the business of electricity supply to the extent in any year actually appropriated for the purpose in the books of the undertaking;
- (ii) all taxes on income and profits;
- (iii) instalments of written down amounts in respect of intangible assets and new capital income expenses to the extent in any year actually appropriated for the purpose in the books of the undertaking; etc...
- (iv) contributions to the contingency reserve, computed as hereinafter set out;
- (v) contributions towards arrears of depreciation;
- (vi) other special appropriations permitted by the Provincial Government.

The words "other special appropriations" are no doubt very wide, but they are to be read in connection with (i) to (v). Besides, the words "sufficient to cover" clearly indicate that the appropriations are intended to compensate for the loss in some form or other suffered by the company. Contributions to the reserve fund would not be appropriations sufficient to cover any such losses. Consequently, contributions to the reserve fund would not fall under clause XVII, sub-clause (2)(a)(vi). The view taken by the A.G. appears to be correct.

Id. P.O.P.

10/3.

P.O.A.

Id. P.O.P.

10/3.

Office of the R.L.A.

General Reserve
Fund.

Electricity
Supply Act, 1949
Clause XVII of
Sixth Schedule.

Clause XVII, sub-clause (2)(c) of the Sixth
Schedule to the Electricity Supply Act, 1949 provides for
special appropriations sufficient to cover -

- (i) previous losses (that is to say excess of
expenditure over income) which have arisen from
the business of electricity supply to the extent
in any year actually appropriated for the
purpose in the books of the undertaking;
- (ii) all taxes on income and profits;
- (iii) instalments of written down amounts in respect
of intangible assets and new capital issues
expenses to the extent in any year actually
appropriated for the purpose in the books of
the undertaking; etc.
- (iv) contributions to the contingency reserve,
computed as hereinafter set out;
- (v) contributions towards arrears of depreciation;
- (vi) other special appropriations permitted by the
Provincial Government.

The words "other special appropriations" are not doubt
very wide, but they are to be read ejusdem generis with
(i) to (v). Besides, the words "sufficient to cover"
clearly indicate that the appropriations are intended to
compensate for the loss in some or other suffered
by the company. Contributions to the reserve fund would
not be appropriations sufficient to cover any such losses.
Consequently, contributions to the reserve fund would not
fall under clause XVII, sub-clause (2)(c)(vi). The view
taken by the Accountant General appears to be correct.

Gd. P.U.Ld.,
11/3

Remembrancer of Legal Affairs.

J.R.to P.U.D., No. 3853, dated the 13th March 1952.

Legal Department.

R.I.No.10119 dated 22-5-52.

Submitted with reference to the note of the P.W.D. at page 65 ante read with the portion marked "A" in the letter dated 14-5-52, of the Electrical Engineer to Government at page 63 ante. It is stated that only the maximum limits of the remuneration of a Managing Agent have been laid down by Para XIII of the Sixth Schedule to the Electricity (Supply) Act, 1943 and as such the terms of the Managing Agency agreement, prescribing the lower scale of remuneration would be binding on the parties to the agreement and the Managing Agent cannot claim any charges in excess of the remuneration permissible under the agreement. The papers have been sent to the R.L.A. to confirm the above view.

The maximum limits of the remuneration of a Managing Agent have been provided in para XIII of the Sixth Schedule to the Electricity (Supply) Act, 1943. Subject to these maximum limits the parties are bound by the terms of an agreement freely entered into by them providing the lower scale and the Managing Agent cannot claim a higher remuneration than is stipulated in the agreement.

Reply may be.

"Seen and Returned.

The view of the Electrical Engineer as at A marked in him his letter dated 14-5-52 at page 63 ante is correct."

Sd.

31-5-52.

S.O.(Civil) The view of the Electrical Engineer at 'A' of his letter dated 14-5-52 is correct (see sub-sections (1) and (2) of sec.87C of the Indian Companies Act, 1913).

Id. D.P.D.
31/5.

R.L.A.

Id. D.P.D.
31/5.

Ref. to P.W.D., No. 9239, d/- 3-6-1952.

Office of the R.A.

Under paragraph XVII(2)(b)(ix) of the Sixth Schedule to the Electricity (Supply) Act, 1943, the expenditure incurred on management including Managing Agents' remuneration as provided for in Paragraph XIII can be debited. The definition of "management" is inclusive. A Managing Director can be appointed to an office of profit, powers delegated to him and his remuneration fixed if the Company is empowered by an article or by a resolution (see page 132 of Lord's Indian Companies Act and Regulation 72 of the Regulations in Table 'A' in the First Schedule to the Indian Companies Act). It is not known in the present case whether the Managing Director was validly appointed by the Company and his remuneration was fixed. If he was so appointed and his remuneration was so fixed, it appears that the expenditure in respect of his remuneration would be considered as part of expenditure on management. The expenditure, if any, incurred by him on his office would also be included as part of expenditure on management. Under paragraph XIII, the Managing Agents' remuneration has been fixed by the remuneration of a Managing Director and his office expenses have not been fixed. Consequently, if his remuneration and the office expenses are reasonable, they could be debited to the account under this provision. Further inquiry would, therefore, be necessary in this respect.

Ed. P.H.Lal,
22/9.

Remembrancer of Legal Affairs.

C.R.to P.W.D., Rs. 15627/A, Dated the 23rd September 1952.

L.D. R.L.No.11431/11-6-82.

Submitted.

Please see R. L.A's opinion No.3353, dated the 18th March 1952, wherein R. L.A. hold that contributions to the reserve fund would not fall under clause XVII, sub-clause (2)(c)(vi) and therefore no appropriations to the reserve fund can be made. In connection with this opinion the Asstt. Examiner, O.A.P., observes (p.31 ante):-

"R The Remembrancer of Legal Affairs in his O.O. Note No.3353, dated 13-3-52, states that contributions to Reserve Fund would not be appropriations to cover any losses. In the case under reference Govt. have granted status quo to the Company during the year 43-50, and hence allowed the Company to carry sums to a reserve. The R.L.A. appears to have given a general interpretation of clause (vi) of para.XVII(2)(C) of the Sixth Schedule. The R.L.A. may, therefore be requested to consider whether in view of the Company having been allowed to maintain status quo ante, it is correct for Govt. to have allowed the Company to carry sums to a reserve. In this connection a reference is also invited to the opinion of the R.L.A. which states that it is not necessary to distribute sums in the manner referred to in para.II(1) of the Sixth Schedule, when the Company is allowed to maintain status - quo ante: vide L.D. Notes in file regarding the Bank - Deolali Electric Supply Co. Ltd."

2. The R.L.A. is requested to advise on the point raised by the Accountant General's Office.

3. It appears that the Tata Hydro-Electric Association Ltd. were allowed to maintain the status quo ante during 1943-50, in respect of the reserve, dividends distribution of profits etc. under G.L. P.O.No.2122/45-46-47, dated the 10th March 1950. This permission was granted under clause X of the Sixth Schedule. That clause enacts:-

"Except with the consent of the State Govt. no sums

shall be carried to a reserve, and no dividends in excess of 3 per cent. on share capital and no other distribution of profits shall be made to shareholders while any sum allowed in respect of depreciation for the year of account or any instalment due in respect of any arrears of depreciation as provided in para. XI remains to be written off in the books of the undertaking."

X That clause X of the Sixth Schedule to the Electricity (Supply) Act, 1943 provides as that it enables Govt. to allow the licensee to carry sums to a reserve or to declare a dividend in excess of 3 per cent. on share capital or to distribute profits even though the depreciation amount remains to be written off in the books of the undertaking. The appropriation to a reserve which is permissible under this clause with Govt.'s consent must, however, be to a "reserve" which is permissible under the provisions of the Sixth Schedule. The provisions of the Sixth Schedule recognise only three types of reserves, viz. (1) the Depreciation Reserve, (2) the Contingencies Reserve and (3) the Tariffs and Dividends Control Reserve (vide Govt. of India Central Water and Power Commission's letter dated 20-2-51 at p.31 ante). Permission under clause X would empower the Company to appropriate amounts to these reserves but it would not enable it to carry sums to a reserve not contemplated by the Act. Moreover as pointed out by the R.T.A., appropriations to a reserve cannot be brought under sub-clause (vi) of clause XVII(2)(c) and in the circumstances it would not be possible for the licensee to carry sums to a General Reserve by utilizing permission under clause X.

4. Additional Secy's opinion No.13530, dated 24-8-51, given in the case of Nasik-Doolali Electric Supply Co. has no connection with the point raised in this file.

Ca.

20/9

D.S. (Civil)

A-A may be the reply.

Id.R.T.A. 22/9.

R.A.

Id.P.T.A.
22/9.

Office of the R.L.A.

What clause X of the Sixth Schedule to the Electricity (Supply) Act, 1948 provides is that it enables Government to allow the licensee to carry sum to a reserve or to declare a dividend in excess of 5 per cent. on share capital or to distribute profits even though the depreciation amount remains to be written off in the books of the undertaking. The appropriation to a reserve which is permissible under this clause with Government's consent must, however, be to a "reserve" which is permissible under the provisions of the Schedule. The provisions of the Sixth Schedule recognise only three types of reserves, viz. (1) the Depreciation Reserve, (2) the Contingencies Reserve and (3) the Tariffs and Dividends Control Reserve (vide Government of India Central Water and Power Commission's Letter dated 22-9-1951 at page 31 ante). Permission under clause X would empower the Company to appropriate amounts to these reserves but it would not enable it to carry sum to a reserve not contemplated by the Act. Moreover as pointed out by the R.L.A., appropriations to a reserve can not be brought under sub-clause (vi) of clause XVII(2)(c) and in the circumstances it would not be possible for the licensee to carry sum to a General Reserve by utilizing permission under clause X.

4. Additional Secretary's opinion No. 13580 dated 24th August 1951, given in the case of Nasik-Daholi Electric Supply Co. has no connection with the point raised in this file.

Sd. P. L. L. L.,
23/9.

Receivance of Legal Affairs.

U.R. to P.W.D., No. 15710/A, dated the 21st September 1952.

Submitted with reference to the P.U.D. office note at pp.33-40 ante.

2. Clause 11 of the Model form of licence to be granted under section 10 of the Indian Electricity Act, 1910 which provides the limits of prices to be charged by the licensee is now sought to be amended by insertion of the words "during the time prior to the date of commencement of his next succeeding year of account" in place of the words "during the time before his accounts for his first full year of working made up as submitted to Govt." so as to conform to the view of the representatives of the Association of Electrical Undertakings that the rates specified in the Sixth Schedule to the Electricity Supply Act, 1948 operates under section 57(1) of the latter Act in relation to new licence from the next succeeding year of account, following his first financial year. The R.E.A. is requested to take advice on the point at 'A' on p.31 ante, raised by the representatives of the Electrical Undertakings.

3. Section 57(1) of the Electricity (Supply) Act, 1948 provides that the provisions of the Sixth Schedule and the Table appended to the Seventh Schedule shall be deemed to be incorporated in the licence of every licensee, not being a local authority, from the date of the commencement of the licensee's next succeeding year of account etc. Under section 2(6) of this Act "Licensee" means a person licensed under Part II of the Indian Electricity Act, 1910 (IX of 1910) to supply energy or a person who has obtained sanction under section 23 of that Act to engage in the business of supplying energy but the provisions of section 26 of this Act notwithstanding, does not include the Board; and under section 2(10) "year of account" means in relation to a licensee, his financial year. It is

clear from these provisions that the provisions of section 57(1) would apply in relation to all licensees as defined above whose licenses were existing and current on the date of the commencement of the Electricity (Supply) Act, 1943 from the next succeeding year of such licensee's year of account, following the commencement of the Act; and in the case of licenses granted thereafter from the next succeeding year of the first licensee's year of account, after the commencement of such licence. The view taken by the Electrical Engineer to Government at p.33 ante on point 'A' at p.31 ante, is correct. To conform to statutory expressions Condition 11 of the Model form of the license may be amended by insertion of the words "during the period between the commencement of this license and the commencement of his next succeeding year of account" after the words "supplied by him" appearing in clause 11. A

Gd.

25/11

J.S.(Civ13)

A - A may be the reply.

Id. R.J.E. 26/11.

T.H.A.

Id P.H.L.

22/11.

Office of the R.L.A.

Model licences to be
granted under Indian
Electricity Act,
1910.

The view taken by the Electrical
Engineer to Government at page 35 ante
on point 'A' at page 37 ante, is correct.
To conform to statutory expressions
Condition 11 of the Model form of the
licence may be amended by insertion of
the words "during the period between the
commencement of this licence and the commence-
ment of his next succeeding year of account"
after the words "supplied by him" appearing
in line 156.

Yl. S. S. S. S.,
27/11.

Remembrancer of Legal Affairs.

J. L. to P. S. D., No. 19920/A,

dated the 23th November 1932.

L.D. R.I.No.37230,dt. 27-11-1952.

Submitted with reference to the note of the P.W.D.
at p.0.

2. In para.9(d) of his audit report, the Asstt.
Examiner, Outside Audits observes:-

" A sum of Rs.47,848 was calculated by this office
as office allowance of the Managing Agents for the year
1949 according to the Electricity (Supply) Act, 1948
& Rs.54,708 for the year 1950. The office allowance
fixed by the agency agreement is Rs.15,000 only.
As only the maximum limit for the remuneration and
office allowance of the Managing agents is prescribed
in para.XIII of the Sixth Schedule to the Electricity
Supply Act, 1948, it is a point for decision whether
the total amount drawn by the Managing agents as
remuneration and office allowance should not be limited
to the amount calculated according to the provisions
of the Act or the amount stipulated in the Agency
agreement whichever is lower."

The papers are & referred to R.L.A. for advice on
the point.

3. The point raised by the Asstt. Examiner, Outside
Audits, has been already considered by the R.L.A. in his
opinion No.9230 dated the 3rd June 1952. As pointed
out in that opinion para.XIII of the Sixth Schedule to
the Electricity (Supply) Act, 1948 prescribes only the
maximum limits and if the parties agree to a lower scale
they will be bound by the scale fixed in the agreement.
Id.

23/11/52

D.S.(Civil)

As in para 3.

Id. R.T.K.

23/11

R.L.A.

Id. P.H.L.

23/11.

Office of the J.L.A.

The point raised by the Assistant Examiner, Outside Audits, has been already considered by the Remembrancer of Legal Affairs in his opinion No. 9239, dated the 3rd June 1952. As pointed out in that opinion paragraph XIII of the Sixth Schedule to the Electricity (Supply) Act, 1949, prescribes only the maximum limits and if the parties agree to a lower scale they will be bound by the scale fixed in the agreement.

Gd. P.H.Led

29/11.

Remembrancer of Legal Affairs.

U.R.to P.W.D., No. 20437/A, dated the 2nd December 1952.

Legal Department.

22352/21-10-52.

Submitted.

As advised by the D.L.A. in his opinion No.1723, dated the 30th January 1951, the P.W.D. has constituted a rating committee under sec.57(2) of the Electricity (Supply) Act, 1948, to examine the charges for the supply of electricity by the Cambay Electric Supply and Industrial Company, Ltd. and to make recommendations thereon to Govt. Prior to the constitution of the said committee it appears that some of the consumers had filed a suit against the company in the court of Civil Judge, Cambay, praying that the company be restrained from cutting off their supply so long as the plaintiffs are paying the charges at the rates specified in the licence. That suit having been dismissed the consumers went in appeal which also was dismissed for want of jurisdiction. In paragraphs 12, ~~12~~ 13 and 14 of his judgment the District Judge, Kaira, has observed that the dispute in question between the consumers and the company arose directly out of the consumers' contention that the old rate of 6 annas per unit charged by the company yielded a reasonable return to the company which contention was not accepted by the company and as such the dispute was clearly one which fell under paragraph 16 of the Sixth Schedule to the Eas Electricity (Supply) Act, 1948. It should have therefore been referred to the arbitration of the authority as defined by the said Act. He also observed that the rating committee is not a judicial or a quasi judicial body empowered to act as an arbitrator in a dispute between the licensee on the one hand and the consumers on the other. In view of these observations in the said judgment the legal advisors of the company are of the opinion that the company cannot proceed with the rating committee and that whatever may be the decision in the rating committee it will not be

enforceable. In the circumstances the R.L.A. is requested to advise as to whether the company should go on with the rating committee. In its letter dated the 23rd October 1952, the company has requested the Govt. to dissolve the rating committee. The R.L.A. is requested to offer his remarks on this letter also.

2. In view of the company's letter dated the 23rd October 1952, it is not necessary to consider the point raised in the P.U.D. note at pp. 33-35 ante. Since the rating committee was appointed by Govt. on the request of the Canby Electric Supply and Industrial Co. Ltd., there does not appear any objection to dissolve the same as requested by the company.

Id.
26/11/52.

D.G.(Civil) Reply may be:-

Although the Rating Committee may not be a judicial or quasi judicial body, still an order passed by Govt. under s. 57(2)(c) of the Electricity (Supply) Act, 1943 on the basis of the report of the Rating Committee would be binding between the Supply Company & consumers and consequently there is no point in dissolving the Rating Committee & appointing an arbitrator instead. Besides the Rating Committee having been appointed at the request of the Supply Company and there being no provision in the Act empowering the Supply Company to withdraw its request after the Rating Committee is appointed there would be no legal objection for the Rating Committee to proceed with its work unless Govt. itself considers its dissolution expedient for any reason.

Id. R.T.E.
27/11.

R.L.A.

Id. P.H.L.
27/11.

Office of the J.L.A.

Electricity
(Supply) Act,
1948 -
Sec.57(2) -
dissolution
of Rating
Committee.

Although the Rating Committee may not be a judicial or quasi judicial body, still an order passed by Government under section 57(2)(c) of the Electricity (Supply) Act, 1948 on the basis of the report of the Rating Committee, would be binding between the supply company and consumers and consequently there is no point in dissolving the Rating Committee and appointing an arbitrator instead. Besides the Rating Committee having been appointed at the request of the supply company and there being no provision in the Act empowering the supply company to withdraw its request after the Rating Committee is appointed, there would be no legal objection for the Rating Committee to proceed with its work unless Government itself considers its dissolution expedient for any reason.

Sd. P.H.Lal

23/11

Secretary of Legal Affairs.

P.O. to P.H.D., No.20021/A, dated the 29th November 1952.

L.D.R.L.No.14775/24-7-52.

Submitted.

Two points are referred to R.L.A. in this file.
They are as follows:-

2. According to the terms of the old managing agency agreement in respect of the Malik Doolali Electric Supply Co.Ltd., which is not rescinded the Agent has been allowed to draw an office allowance not exceeding Rs.7200/- per year. In the accounts of the Company which have been audited by the Accountant General, he has found that the amounts actually drawn are Rs.14,916/- and Rs.15,933/- respectively for the years 1949 and 1950. The Accountant General considers that the Agents were not entitled to draw these amounts and has referred the matter to Govt. In view of R.L.A's opinion No.9233, dated 3-6-1952, P.W.D. agrees with the Accountant General, but the R.L.A. is requested to confirm its view.

3. The other point that arises is about the period of depreciation of an addition to the main plant. The Electrical Engineer considers that the life of addition to the plant should be taken from the date of the installation of the addition and not from the date of the installation of the set to which it has been added, and the period of such an addition shall be that of set to which it is added. The Chief Engineer to the Electric Grid, however, states that the addition to the main plant should be depreciated fully during the balance life period of the plant, the life period for the main plant having been fixed as per Electricity (Supply) Act, 1949. According to him, if the life of the plant is fixed at 25 years and if there is an addition in the 3rd year, the life of this addition should be taken as 23 years and during this period it should be fully depreciated by the reason being that the addition cannot be used

independently of the main plant when the latter is retired at the end of its life period. He, however, observes that this rule will not apply to transmission and distribution lines. P.H.D. considers that there is difference of opinion between the two officers and the matter is referred to P.L.A. for advice.

4. The view taken by the P.H.D. on the first question is correct. As regards the second question attention is invited to the Seventh Schedule and the Table appended thereto which shows the various assets and the prescribed period of their depreciation. Having regard to this Table it appears that each individual assets as shown in the Table will have to be considered as a whole and also depreciated as a whole so that at the end of the prescribed period the depreciation fund might be sufficient to purchase a new asset and consequently the additions thereto can not be considered independently of the asset. The view taken by the Chief Engineer, Bombay Electric Grid, is correct.

Id.

D.J.(Civil)

As in para.4

Id. R.T.K. 7/10.

R.T.A.

Id. P.H.L.

7/10.

Office of the P.L.A.

The view taken by the Public Works Department on the first question is correct. As regards the second question attention is invited to the Seventh Schedule and the Table appended thereto which shows the various assets and the prescribed period of their depreciation. Having regard to this Table it appears that each individual asset as shown in the Table will have to be considered as a whole and also depreciated as a whole so that at the end of the prescribed period the depreciation fund might be sufficient to purchase a new asset and consequently the additions thereto cannot be considered independently of the asset. The view taken by the Chief Engineer, Bombay Electric Grid, is correct.

Sd. P.H.Lad,
3/10

Remembrancer of Legal Affairs.

U.P.to P.W.D., No. 16583/A, dated the 9th October 1952.

Office of the R.L.A.

The R.L.A. is requested to advise on the various questions referred to in the notes at pp.65-90 ante in regard to the interpretation of the various provisions of the Electricity (Supply) Act, 1948.

2. The first question raised for consideration is whether expenses on account of the Director's fees, Head Office salaries printing and stationery can be considered to be expenses on management for the purposes of paragraph XVII(2) of the Sixth Schedule to the Act. Under that para. the expression "clear profit" is defined to mean the difference between the amount of income and the sum of expenditure plus specific appropriations made up as stated in clauses (a), (b) and (c). In the case of the Poona Electric Supply Co. Ltd., the Accountant General has provisionally allowed this expenses as falling under para. XVII(2)(b)(xi). The Electrical Engineer to Govt. who was consulted by the P.W.D. considers that the expenditure of the type in question would be expenditure on management within the meaning of clause (2)(b)(ix). Para. XVII(2)(b)(xi) referred to by the Accountant General authorizes the deduction of other expenses admissible under the law for the time being in force in the assessment of Indian Income-tax and arising from and ancillary or incidental to the business of electricity supply. The A.G. seems to have based his view on the ground that the money spent on paying fees to Directors, and salaries to office staff and on stationery and printing is expense incurred for the purpose of earning profits. Item (xi) however appears to be of a general nature. Item (ix) in that para. allows the deduction of expenditure incurred on management. The expression "management" means administration, control etc. (vide Law Lexicon). The expenditure of the type referred to would appear to be incurred for the conduct of the business and would appear to be expenditure incurred on management within the meaning of para. 17(2)(b)(ix). The view expressed by the Electrical Engn. to Govt. in this respect in para. 2 of his

memo. at p.57 ante appears to be correct.

3. The second question raised for consideration is whether for the purpose of para.XVII(2)(^(c))(ii) only the actual amount of income tax paid can be taken into consideration while arriving at a clear profit. Under that clause a sum sufficient to cover all taxes on income and profits is allowed to be deducted. There is no authority under the provision of para.XVII(2)(c)(ii) to appropriate a sum in excess of the actual income tax demand. The view expressed both by the A.C. and the E.B. that only the actual amount of income-tax assessed can be permitted to be deducted appears to be correct.

4. The third question is whether the method adopted by the Poona Electric Supply Co. Ltd. under which the Revenue Account of the Co. for the year had borne heavy audit on account of arrears of depreciation (instead of the arrears being written off by equated payments) is legally permissible. Under para.XI in the Sixth Schedule arrears of depreciation calculated in accordance with para.VI may be written off by equated payments over the remainder of the prescribed period and the amount so set aside in the books of the undertaking may be taken into account in any year as a special appropriation for purposes of assessing the clear profit. The expression "prescribed period" as defined in para.XVII(3) of the Sixth Schedule means in respect of each of the assets specified in the table appended to the Seventh Schedule, the number of years or period specified therein, in relation to such asset, running in each case from the beginning of the year of account next following that in which the particular asset became available for use in the business. If a licensee on account of losses suffered by him in his business could not make provision for depreciation, it would be open to him to write off the arrears during the remaining of the prescribed period by equated payments. In that case only the amount so set aside can be taken into account in any year as a special appropriation within the meaning of para.XVII(2)(c)(v). If

the Poona Electric Supply Co. has not followed this principle it cannot claim the amount appropriated by it towards depreciation charges to be deducted for the purpose of finding out clear profit. The answer to this question is in the negative. The view expressed by the I.R. on this question is correct.

5. The fourth question is whether in the case of a proprietary concern the licensee can charge any amount on account of his remuneration; and if so, whether the same should not be limited to the amount of remuneration admissible to Managing Agents. Under clause (b) of para.XVII(2) the expenditure incurred on management including managing agent's remuneration can be debited. If the proprietor of a concern himself manages the business, there should be no legal objection to his claiming a reasonable remuneration which can be included in the expenditure on management under clause (b) of para. XVII(2). The view expressed by the I.R. in this respect appears to be correct.

6. The fifth question is whether the income derived from the sale of stores and from wiring work undertaken can be regarded as profit pertaining to the business of electric supply within the meaning of para.XVII(2)(a)(iii). That para. specifies income derived from sale and repairs of lamps and apparatus. "Apparatus" means a set of materials for a given work (see Webster's New International Dictionary). Wiring work done by an Electric Undertaking would appear to fall under that clause as it would include the sale of the apparatus requisite for conveying electricity. The other item referred to is stores. It is not understood what is intended by that expression, but if it refers to the sale of wiring, it appears it would fall under para.XVII(2)(a)(iii).

7. The sixth question is whether the loss on sale of investment can be treated as part of the operating expenses within item XVII(2)(b)(ii). It appears that the Andhra Valley Power Supply Co., Ltd., has treated the loss on sale of investment during the year 1950, amounting to Rs.3358/- as part of the operating expenses and shown it under item (ii) of clause

2(b) of para.XVII. Both the Accountant General and Electrical Engineer consider that this loss should be debitable to the "Contingencies Reserve" (2 presumably under para.XVII(2) (c)(iv). Under item (xi) above referred to other expenses admissible under the law for the time being in force in the assessment of Indian Income-tax and arising from and ancillary or incidental to the business of electricity supply can be

deducted from the amount of income. It is not known whether the loss of capital incurred by the Andhra Valley Power Supply Co. was in the ordinary course of the Company's business. Under the Income-tax Act if an assessee not dealing in stocks and shares loses on their sale, such loss is a capital loss ~~and~~ and cannot be deducted from his business profits (Ganga Sagar vs. Commissioner of Income-tax J.P.53 All.451 and other cases quoted at p.651 of Surdaran's Law of Income-tax). Moreover, the expression used in item (xi) is "expenses" and not losses. The Accountant General's view supported by the E.E. that the loss should be debited to contingency reserve appears to be correct.

8. The seventh question is whether service connection fees can be treated as revenue or other receipts arising from and ancillary to the business of electricity supply within para.XVII(2)(a)(vii) of the Sixth Schedule. If it is the ordinary business of electricity supply companies to connect service lines, the service connection fees would appear to fall within clause (vii). The view expressed by the Electrical Engineer in para.11 on p.53 ante, appears to be correct.

9. The last question is whether the amount debited by the Poona Electric Supply Co. towards the Employers' Retiring Gratuities Reserve is covered by para.XVII(2)(b)(xii). In 1950, the Co. applied to the State Govt. for permission to appropriate from out of its profits a sum of Rs.45,000/- towards the Reserve. The permission was presumably asked for as they considered it to be a special appropriation within clause C (vi) of para.XVII(2). The permission was eventually

refused on the ground that the Electricity (Supply) Act did not contemplate such a reserve. The Company also obtained the opinion of Counsel Shri R.J. Mohan (vide pp. 1-2 ante), who considered that contribution towards such a reserve would have to be considered to be an item of expenditure permitted to be deducted under para. XVII(2)(b). Clause (xii) of para. XVII(2)(b) makes a specific provision in regard to contributions to gratuity which apparently refer to the amount of gratuity payable during a particular year. As stated by the Examiner Outside Audit there is no specific provision in the Act for the creation of a reserve for gratuity. Besides when gratuity can be appropriated under 2(b)(xii) there is no necessity of creating any reserve for gratuity. The proposed reserve would therefore appear to be beyond the scope of para. XVII(2)(b)(xii).

Ed. P. M. Lal
31/12,
Remembrancer of Legal Affairs.

V.2. to P.U.D., No. 23174/A, dated the 31st December 1952.